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IN THE MATTER OF:

THE EXECUTIVE COUNSEL TO THE FINANCIAL REPORTING COUNCIL

-and-

JOHN ANTHONY MEHIGAN

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PARTICULARS OF FACT AND ACTS OF MISCONDUCT

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I. INTRODUCTION

1. The Financial Reporting Council (“**the FRC**”) is the independent disciplinary body for the accountancy and actuarial professions in the UK. The FRC’s rules and procedures relating to accountants are set out in the Accountancy Scheme of 8 December 2014 (“**the Accountancy Scheme**”).
2. This is the Executive Counsel’s Particulars of Fact and Acts of Misconduct (“**the Particulars**”) in respect of Mr John Anthony Mehigan, known as Anthony Mehigan (“**The Respondent**”), a member of the Institute of Chartered Accountants in England and Wales (“**ICAEW**”), as regards his conduct in relation to:
  - (a) The operation of a UK registered charity (No. 1129044) known as the Cup Trust (“**the Charity**”). Between January and November 2010 the Charity participated in a tax avoidance scheme utilising Gift Aid relief (“**the Scheme**”); and
  - (b) The approval of the financial statements of the Charity for the years ended 31 March 2010 (“**the 2010 Financial Statements**”) and 31 March 2011

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**(“the 2011 Financial Statements”) (together, “the Financial Statements”).**

3. The Respondent is a member of the ICAEW, and consequently a Member for the purposes of the Accountancy Scheme.

### **The Respondent**

4. Mr Mehigan qualified as a chartered accountant in 1984 and was previously a tax partner with a number of large accountancy firms, including Ernst & Young, Arthur Andersen and Robson Rhodes. He has specialised for many years in the design, promotion and implementation of tax avoidance schemes, primarily intended for use by high net worth individuals.

### **The Relevant Standards of Conduct**

5. The standards of conduct reasonably to be expected of the Respondent included those set out in the Fundamental Principles and Statements contained in the ICAEW Code of Ethics (“**the Code**”). The Fundamental Principles and Statements in the Code apply to all members and member firms of the ICAEW. A new version of the Code came into force on 1 January 2011, and the extracts set out below are from that version. There is no material difference between these parts and those contained in the prior version, dated September 2006, and the nature of the obligations thereunder.
6. Fundamental Principles (b) to (c) set out in paragraph 100.5<sup>1</sup> of the Code provide that:-

*“A professional accountant shall comply with the following fundamental principles:*

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<sup>1</sup> 2006 Code - paragraph 100.4.

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(b) **Objectivity** – to not allow bias, conflict of interest or undue influence of others to override professional or business judgments.

(c) **Professional Competence and Due Care** – to maintain professional knowledge and skill at the level required to ensure that a client or employer receives competent professional services based on current developments in practice, legislation and techniques and act diligently and in accordance with applicable technical and professional standards.”

7. Fundamental Principle (b) is supplemented by guidance in sections 120.1 to 120.2, which provides that:-

*“The principle of objectivity imposes an obligation on all professional accountants not to compromise their professional or business judgment because of bias, conflict of interest or the undue influence of others. Objectivity is the state of mind which has regard to all considerations relevant to the task in hand but no other.*

*A professional accountant may be exposed to situations that may impair objectivity. It is impracticable to define and prescribe all such situations. A professional accountant shall not perform a professional service if a circumstance or relationship biases or unduly influences the accountant’s professional judgment with respect to that service.<sup>2</sup>”*

8. Fundamental Principle (c) is supplemented by guidance in section 130.1, which provides that:-

*“The principle of professional competence and due care imposes the following obligations on all professional accountants: (a) To maintain professional knowledge and skill at the level required to ensure that clients or employers receive competent professional service; and (b) To*

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<sup>2</sup> 2006 Code – “Relationships that bias or unduly influence the professional judgment of the professional accountant should be avoided”.

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*act diligently in accordance with applicable technical and professional standards when providing professional services.”*

9. Section 300.7 of the Code provides that compliance with the Fundamental Principles may potentially be threatened by a broad range of circumstances and relationships and states that threats fall into one or more of the following categories: (a) self-interest; (b) self-review; (c) advocacy; (d) familiarity; and (e) intimidation. By section 300.11 of the Code, an example of a circumstance that may create familiarity threats for a professional accountant in business includes *“long association with business contacts influencing business decisions.”*

#### **The Relevant Accounting Standards**

10. The Charities (Accounts and Reports) Regulations 2008 required the 2010 and 2011 Financial Statements to be prepared in accordance with the methods and principles set out in the Statement of Recommended Practice for Accounting and Reporting by Charities, issued by the Commission on 4 March 2005 (**“the Charities SORP”**). The Charities SORP includes (at paragraph 3) that:-

*“The accounting recommendations of this SORP apply to all charities in the United Kingdom that prepare accounts on the accruals basis to give a true and fair view of a charity’s financial activities and financial position regardless of their size, constitution or complexity.”*

And (at paragraph 16), that:-

*“In all but exceptional circumstances, charities preparing accruals accounts should follow this SORP’s accounting recommendations to assist in ensuring that their accounts give a true and fair view.”*

11. The Charities SORP is based on the application of UK GAAP accounting standards. For both of the Financial Statements, the UK accounting standards

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comprised Statements of Standard Accounting Practice (“**SSAPs**”) and Financial Reporting Standards (“**FRSs**”).

## **II. THE RESPONDENT’S MISCONDUCT**

12. Paragraph 2(1) of the Accountancy Scheme defines an “Adverse Finding” (inter alia) as a “*finding by a Disciplinary Tribunal that a Member or Member Firm has committed Misconduct.*”

13. “Misconduct” is defined under Paragraph 2(1) of the Scheme as:-

*“...an act or omission or series of acts or omissions, by a Member or Member Firm in the course of his or its professional activities (including as a partner, member, director, consultant, agent, or employee in or of any organisation or as an individual) or otherwise, which falls significantly short of the standards reasonably to be expected of a Member or Member Firm or has brought, or is likely to bring, discredit to the Member or the Member Firm or to the accountancy profession.”*

14. As set out in further detail below, the Respondent’s conduct fell significantly short of the standards reasonably to be expected of him, as follows:

- (a) That, by reason of his conflict of interest, he signed company resolutions and approved correspondence to the Charity Commission (“**the Commission**”) on behalf of the Charity’s trustee which contained statements that were false and/or misleading.
- (b) That by reason of his conflict of interest, he failed to take steps with regards to the scrutiny, adoption and operation of the Scheme.
- (c) That he approved the Financial Statements when they had not been prepared in accordance with the relevant accounting standards.

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15. It should be noted that proof of the allegations does not require the Executive Counsel to demonstrate either that participation by the Charity in the Scheme was unlawful, or that the Scheme is not effective as a matter of tax law.

**Background to the Allegations and the Respondent's conflict of interest**

16. The Charity was registered as a UK charity on 7 April 2009 having been established by declaration of trust on 10 March 2009 with the general charitable object of applying its income and capital "*for all and any charitable purposes*". The trustee of the Charity was (and remains) Mountstar (PTC) Limited ("**Mountstar**"), a company incorporated in the BVI on 2 January 2009, which had 3 directors during the relevant period, of which Mr Mehigan was one from 20 January 2009 through to the present.
17. Mountstar, on behalf of the Cup Trust, resolved to, and did, enter into a fundraising agreement with a partnership called Harry (*or Harrison*) Associates ("**the Fundraising Agreement**").
18. Mr Mehigan himself had no financial interest in the adoption and outcome of the Scheme. However, Mr Mehigan had longstanding ties with a business associate resulting from, inter alia, their collaboration in tax avoidance schemes since 2005, and their continuing interest in, or involvement with, various businesses. In particular, Mr Mehigan and this business associate continued to have a joint direct financial interest in the outcome of the continuing litigation of tax schemes they had previously jointly promoted.
19. Mr Mehigan's long association and continuing common financial interests with his business associate, who would benefit substantially from the Scheme, compromised Mr Mehigan's ability to consider matters relating to the Scheme solely in the interests of the Charity.

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## **THE ALLEGATIONS AGAINST MR MEHIGAN**

### ***FALSE AND/OR MISLEADING STATEMENTS***

#### **ALLEGATION 1**

The conduct of Mr Mehigan fell significantly short of the standards reasonably to be expected of a Member in that he signed three resolutions, each containing a statement confirming that he had no conflict of interest in respect of the Scheme, that were materially false and/or misleading. In so doing, Mr Mehigan allowed his conflict of interest, as set out above, to override his professional judgment and thereby failed to maintain objectivity in accordance with Fundamental Principle (b) 'Objectivity' in the ICAEW Code of Ethics.

#### **ALLEGATION 2**

The conduct of Mr Mehigan fell significantly short of the standards reasonably to be expected of a Member in that he signed three resolutions each containing a statement confirming that the transactions being undertaken by the Charity were solely for charitable purposes and in furtherance of the Charity's charitable objects, which were materially false and/or misleading. In so doing, Mr Mehigan allowed his conflict of interest, as set out above, to override his professional judgment and thereby failed to maintain objectivity in accordance with Fundamental Principle (b) 'Objectivity' in the ICAEW Code of Ethics.

#### **ALLEGATION 3**

The conduct of Mr Mehigan fell significantly short of the standards reasonably to be expected of a Member in that he signed three resolutions containing a statement confirming that he had been informed of certain matters by Harrison Associates or Harry Associates, which were materially false and/or misleading. In so doing, Mr Mehigan allowed his conflict of interest as set out above, to override his professional judgment and thereby failed to maintain objectivity in

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accordance with Fundamental Principle (b) 'Objectivity' in the ICAEW Code of Ethics.

#### **ALLEGATION 4**

The conduct of Mr Mehigan fell significantly short of the standards reasonably to be expected of a Member in that he approved a letter to the Commission from Mountstar containing a statement describing his associate's connections to the Scheme that was materially false and/or misleading. In so doing, Mr Mehigan allowed his conflict of interest, as set out above, to override his professional judgment and thereby failed to maintain objectivity in accordance with Fundamental Principle (b) 'Objectivity' in the ICAEW Code of Ethics.

#### ***FAILURE TO TAKE NECESSARY STEPS***

#### **ALLEGATION 5**

The conduct of Mr Mehigan fell significantly short of the standards reasonably to be expected of a Member in that he allowed his conflict of interest to override his professional judgment when, by reason of his conflict of interest as set out above, he failed to carry out any, or any adequate, due diligence prior to signing the January resolution and failed thereby to maintain objectivity in accordance with Fundamental Principle (b) 'Objectivity' in the ICAEW Code of Ethics.

#### **ALLEGATION 6**

The conduct of Mr Mehigan fell significantly short of the standards reasonably to be expected of a Member in that he allowed his conflict of interest to override his professional judgment when, by reason of his conflict of interest as above, he failed to obtain independent legal advice in respect of the adoption or operation of the Scheme and failed thereby to maintain objectivity in accordance with Fundamental Principle (b) 'Objectivity' in the ICAEW Code of Ethics.

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### **ALLEGATION 7**

The conduct of Mr Mehigan fell significantly short of the standards reasonably to be expected of a Member in that he allowed his conflict of interest to override his professional judgment when, by reason of his conflict of interest as set out above, he failed to have conduct of, or sufficient oversight over, communications between Mountstar and the Commission and failed thereby to maintain objectivity in accordance with Fundamental Principle (b) 'Objectivity' in the ICAEW Code of Ethics.

### **ALLEGATION 8**

The conduct of Mr Mehigan fell significantly short of the standards reasonably to be expected of a Member in that he allowed his conflict of interest to override his professional judgment when, by reason of his conflict of interest as set out above, he failed to have conduct of, or sufficient oversight over (i) communications between Mountstar and HMRC in respect of the Scheme or (ii) decisions taken with regards to dealing with HMRC in respect of the Scheme and failed thereby to maintain objectivity in accordance with Fundamental Principle (b) 'Objectivity' in the ICAEW Code of Ethics.

### ***APPROVAL OF THE FINANCIAL STATEMENTS***

### **ALLEGATIONS 9 AND 10**

The conduct of Mr Mehigan fell significantly short of the standards reasonably to be expected of a Member in that he approved the 2010 (Allegation 9) and 2011 (Allegation 10) Financial Statements when they presented income and fundraising costs such that the Financial Statements did not give a true and fair view and/or were not prepared in accordance with applicable technical standards, namely FRS 5 and the Charities SORP, and he thereby failed to act with professional competence and due care in accordance with Fundamental Principle (c) 'Professional competence and due care' in the ICAEW Code of Ethics.

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### **ALLEGATIONS 11 AND 12**

**The conduct of Mr Mehigan fell significantly short of the standards reasonably to be expected of a Member in that he approved the 2010 (Allegation 11) and 2011 (Allegation 12) Financial Statements which: (i) disclosed the Gift Aid Claims as contingent assets; and (ii) at the same time did not disclose the fees due to Harry Associates under the Fundraising Agreements as contingent liabilities, such that the Financial Statements did not give a true and fair view and/or were not prepared in accordance with applicable technical standards, namely FRS12, and thereby failed to act with professional competence and due care in accordance with Fundamental Principle (c) 'Professional competence and due care' in the ICAEW Code of Ethics.**

### **ALLEGATIONS 13 AND 14**

**The conduct of Mr Mehigan fell significantly short of the standards reasonably to be expected of a Member in that he approved the 2010 (Allegation 13) and 2011 (Allegation 14) Financial Statements, which did not disclose the numerous related party transactions entered into by the Charity, such that the Financial Statements did not give a true and fair view and/or were not prepared in accordance with applicable technical standards, namely FRS 8 and the Charities SORP, and thereby failed to act with professional competence and due care in accordance with Fundamental Principle (c) 'Professional competence and due care' in the ICAEW Code of Ethics.**